89-1005

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 1005

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

PHIL CARUSO, as President of the Patrolmen's Benevolent Association of the City of New York, Inc., and THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,
Petitioners,

-against-

THE CITY OF NEW YORK, EDWARD I.
(caption continued on next page)

MEMORANDUM OPPOSING CERTIORARI

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BEST AVAILABLE COPY

KOCH, as Mayor of the City of New York, THE POLICE DEPARTMENT OF THE CITY OF NEW YORK, BENJAMIN WARD, as Police Commissioner of the City of New York, and THE CIVILIAN COMPLAINT REVIEW BOARD of the Police Department of the City of New York,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK.

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Petitioners presented no constitutional issue to the New York courts. Had they done so, they could have appealed to the

New York Court of Appeals as of right. New York Civil Practice Law and Rules (CPLR) §5601(b)1. That Court granted leave to appeal on their motion. Caruso, Matter of, v. City of New York, 73 NY2d 707. Had the Court perceived a constitutional issue, it would have denied the motion on the ground that an appeal lied as of right. Ware v. Valley Stream High School District, 74 NY2d 829 (1989). The petition is silent on the subject. It should be denied. Rule 14.1(h), formerly 21.1(h).

Respectfully submitted,

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January 2, 1990